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USA v. Boyer

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-2582

UNITED STATES OF AMERICA

v.

ROBERT A. BOYER, SR.

ROBERT ARNOLD BOYER, SR,
Appellant

On Appeal from the United States District Court
for the District of Delaware
D.C. Criminal No. 03-cr-00033
District Judge: The Honorable Sue L. Robinson

Submitted under Third Circuit LAR 34.1(a) – March 28, 2006

Before: McKEE and VAN ANTWERPEN, Circuit Judges,
and POLLAK, * District Judge.

(Opinion filed June 7, 2006)

* Honorable Louis H. Pollak, District Judge for the United States District Court of the Eastern District of Pennsylvania, sitting by designation.

OPINION

POLLAK, District Judge:

Defendant-appellant Robert Arnold Boyer appeals the sentence that was imposed on May 2, 2005, after he pled guilty to knowingly embezzling \$358,636.30 from the employee profit-sharing plan of the construction/excavation business he operated. For the reasons that follow, we will affirm.

Defense counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 783, 744 (1967). Defense counsel's brief asserts that he has carefully reviewed the record and found no non-frivolous issues for appeal in this case. Accordingly, defense counsel requests permission to withdraw.¹ Our review of the record confirms counsel's assessment that there are no non-frivolous issues for appeal. Therefore, counsel's motion to withdraw will be granted.

Because we write primarily for the parties, who are familiar with this case, we need not set forth the full factual or procedural history of this appeal. Mr. Boyer entered a guilty plea on January 4, 2005, admitting guilt with respect to all six counts of an indictment charging him with knowingly embezzling money and assets belonging to the R.A. Boyer, Inc. employee profit-sharing plan, in violation of 18 U.S.C. § 664. Mr.

¹ Defense counsel states that—by letters dated May 9, 2005 and June 20, 2004—he advised Mr. Boyer that he saw no non-frivolous issues for appeal and intended to withdraw. Defense counsel also states that Mr. Boyer has not responded.

Boyer was sentenced to twenty-seven months imprisonment in May 2005.

The record indicates that Mr. Boyer's guilty plea was properly accepted by the court, and that the sentence imposed was within the range recommended by the U.S. Sentencing Guidelines and in accord with *United States v. Booker*, 543 U.S. 220 (2005). The district court acknowledged the advisory nature of the Guidelines, and imposed its sentence "for reasons that were logical and consistent with the factors set forth in [18 U.S.C.] § 3553(a)." *United States v. Cooper*, 437 F.3d 324, 326-27 (2006) (citing *United States v. Williams* 425 F.3d 478, 481 (7th Cir. 2005)). Defense counsel's objection to a two-level enhancement for obstruction of justice was properly denied.

Since there are no non-frivolous issues for appeal, the judgment of conviction filed May 2, 2005 will be affirmed, and counsel will be granted leave to withdraw.